

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

<hr/>)	
The Secretary, United States)	
Department of Housing and Urban)	
Development, on behalf of XXXX)	
and XXXX,)	
)	
Charging Party,)	
)	FHEO No. 09-11-0339-8
v.)	
)	
Lakeport Village Associates, LLC,)	
dba Lakeport Apartment Associates,)	
AWI Management Corporation,)	
)	
Respondents.)	
)	
<hr/>)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On December 20, 2010, XXXX and XXXX (collectively “Complainants”) filed a timely complaint with the U.S. Department of Housing and Urban Development (“HUD” or the “Department”), alleging that AWI Management Corporation and Lakeport Village Associates, LLC (collectively “Respondents”) violated the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the “Act” or “Fair Housing Act”), by discriminating on the basis of disability.¹ Complainants amended the complaint to add additional allegations. Complainants alleged facts showing that Respondents violated the Act by: making housing unavailable to Complainants because of Complainants’ disabilities, in violation of 42 U.S.C. § 3604(f)(1)(A); discriminating against Complainants in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of Complainants’ disabilities, in violation of 42 U.S.C. 3604(f)(2)(A); refusing to make a reasonable accommodation in their rules, policies, or practices, when such accommodation was necessary to afford Complainants equal opportunity to use and enjoy their dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and by interfering with Complainants’ exercise or enjoyment of the

¹ Although the Fair Housing Act uses the term “handicap,” for purposes of this Charge of Discrimination, the term “disability” may be used interchangeably.

rights granted or protected by section 804 of the Act, in violation of 42 U.S.C. § 3617. HUD's efforts to conciliate the complaint were unsuccessful.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination ("Charge") on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. §§ 3610(g)(1) and (2). The Secretary of HUD has delegated that authority to the General Counsel. 24 C.F.R. §§ 103.400 and 103.405. The General Counsel has, in turn, redelegated that authority to the Regional Counsel. 76 Fed. Reg. 42463, 42465 (July 18, 2011).

The Office of Fair Housing and Equal Opportunity Region IX Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and Determination of Reasonable Cause, Respondents AWI Management Corporation and Lakeport Village Associates, LLC are charged with discriminating against Complainants XXXX and XXXX, aggrieved persons as defined by 42 U.S.C. § 3602(i), based on disability in violation of 42 U.S.C. § 3604(f)(1)(A), 42 U.S.C. § 3604(f)(2)(A); 42 U.S.C. § 3604(f)(3)(B), and 42 U.S.C. § 3617 of the Act as follows:

1. It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any renter because of the disability of that renter. 42 U.S.C. § 3604(f)(1)(A); 24 C.F.R. § 100.202(a)(1).
2. It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of the disability of that renter. 42 U.S.C. § 3604(f)(2)(A); 24 C.F.R. § 100.202(b)(1).
3. For purposes of 42 U.S.C. § 3604(f), discrimination includes a refusal to make a reasonable accommodation in rules, policies, practices, or services, when such accommodation may be necessary to afford a person equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).
4. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of the Act. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b).

5. The Act defines disability as a physical or mental impairment which substantially limits one or more major life activities, a record of having such an impairment, or being regarded as having such an impairment. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201.
6. At all times relevant to this Charge, Complainant XXXX has been disabled as defined by the Act. She has mental retardation and a marginal intelligence quotient, which affect her housekeeping abilities and ability to understand social conventions.
7. At all times relevant to this Charge, Complainant XXXX has been disabled as defined by the Act. She has mental retardation and a marginal intelligence quotient, which affect her housekeeping abilities and ability to understand social conventions.
8. At all times relevant to this Charge, XXXX, XXXX's minor daughter, lived with the Complainants at the Subject Property.
9. At all times relevant to this Charge, XXXX has been disabled as defined by the Act. She has a developmental delay and autism. She takes medication for her disabilities, and changes in the medication have caused elopement behavior.
10. Respondents do not dispute that Complainants and XXXX are disabled.
11. At all times relevant to this Charge, Complainants resided at XXXX, Lakeport, CA 95453 ("Subject Property").
12. Respondent Lakeport Village Associates, LLC is the owner of the Subject Property.²
13. Respondent AWI Management Corporation manages the Subject Property.
14. At all times relevant to this Charge, Connie Bradford was employed by Respondent AWI Management Corporation as the on-site manager for Lakeport Village Apartments.
15. On or about January 27, 2010, Respondents issued Complainants a notice to quit because Complainants had allegedly failed to keep the Subject Property in a habitable condition.
16. In a letter dated February 19, 2010, Complainants' representative requested a reasonable accommodation on behalf of Complainants. The representative stated that the January 2010 notice to quit was based on conduct related to Complainants'

² Respondent Lakeport Village Associates, LLC is referred to as and/or also does business as "Lakeport Village Apartments," "Lakeport Apartment Associates," and "Lakeport Apartment Association."

disabilities and requested: the notice to quit be rescinded, the associated unlawful detainer proceeding be dismissed, and that no further action be taken to terminate Complainants' tenancy. The representative also asked that any future concerns about lease violations or housekeeping or behavioral issues be brought to the attention of Complainants' caregiver, XXXX, so that XXXX could enlist support services to resolve the problem. If the problem was resolved, the request asked that no adverse action be taken against Complainants.

17. On or about March 3, 2010, Respondents' representative responded to Complainants' February 19, 2010 letter. Respondents' letter stated that it agreed to the terms proposed in Complainants February 19, 2010 letter, and added two additional terms. The additional terms stated that Respondents reserved the right to make random monthly inspections of the Subject Property upon 24-hour notice and that Complainants could not destroy or damage property belonging to Respondents.
18. In a letter dated March 9, 2010, Complainants' representative responded that Complainants agreed to the terms of Respondents' March 3, 2010 letter. The representative made a few minor "clarifications and adjustments"; most importantly that Respondents must provide "24-hour written notice" prior to any inspection of Complainants' unit (emphasis in the original letter).
19. Finally, on or about March 13, 2010, Respondents representative confirmed that Respondents were in agreement with the terms of Complainants' March 9, 2010 letter.
20. Respondents do not dispute that they entered into a reasonable accommodation agreement with Complainants in March 2010.
21. After entering into the reasonable accommodation agreement, Complainants failed their first monthly housekeeping inspection that took place on or about April 16, 2010, for which they received a lease violation notice.
22. After receiving the violation notice, Ms. Lopez worked with Complainants to clean the Subject Property. The Subject Property passed a re-inspection on or about April 30, 2010.
23. On or about August 12, 2010, Respondents issued Complainants a lease termination notice, based on eight alleged violation notices. Seven of the eight alleged violations occurred after the March 2010 reasonable accommodation agreement.
24. In a letters dated September 2, 2010 and September 13, 2010, Complainants' representative requested that Respondents withdraw and cancel the pending lease termination notice. Complainants' representative also requested that Respondents comply with the existing March 2010 reasonable accommodation by bringing any

allegations of lease violations or housekeeping or behavioral concerns to the attention of XXXX, giving her an opportunity to enlist support services to resolve the problem.

25. Complainants moved out of the Subject Property in December 2010, after declining to accept the restrictive terms of tenancy Respondents would have required of Complainants in order for them to remain. The proposed terms included, but were not limited to, restrictions stating that Complainants: were to “stay to themselves” and could not approach any tenants in the complex; could not loiter in any common areas, defined as “standing in the common areas smoking or talking with other tenants”; were to keep the Subject Property clean at all times, with clothes picked up, dirty dishes placed in the sink, and all walls, cabinets, and floors clean at all times, and all food kept in the kitchen; and were to closely supervise XXXX at all times, meaning that an adult was to be in the same room or outside in the same area at all times.
26. Excluding the housekeeping violation notice issued to Complainants on April 16, 2010, Respondents did not provide Complainants or XXXX with any of the alleged violation notices until the lease termination notice was issued.
27. Respondents’ failure to bring the lease violation notices to the attention of XXXX, and their failure to allow Complainants a reasonable amount of time to remedy the alleged problems, constitutes a breach and denial of the March 2010 reasonable accommodation agreement.
28. Similarly situated tenants received lease violation notices similar to those allegedly provided to Complainants, but those tenants were not evicted as a result of the lease violations.
29. Respondents violated the Act because they discriminated against Complainants by making housing unavailable based on their disability. 42 U.S.C. § 3604(f)(1)(A); 24 C.F.R. § 100.202(a)(1).
30. By breaching the reasonable accommodation agreed to by both parties, Respondents violated the Act by failing to provide a reasonable accommodation to Complainants when such accommodation was necessary to afford Complainants an equal opportunity to use and enjoy their dwelling. 42 U.S.C. § 3604 (f)(3)(B), 24 C.F.R. § 100.204(b).
31. Respondents violated the Act because their refusal to provide a reasonable accommodation resulted in discrimination against Complainants in the terms, conditions, or privileges of the rental of their dwelling, or in the provision of services or facilities in connection with such dwelling, because of Complainants’ disabilities. 42 U.S.C. § 3604(f)(2)(A); 24 C.F.R. § 100.202(b).

32. Respondents violated the Act by interfering with Complainants' exercise or enjoyment the rights guaranteed by section 804 of the Act. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b).

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents with engaging in discriminatory housing practices in violation of Sections 3604(f)(1)(A), 3604(f)(2)(A), 3604(f)(3)(B), and 3617 of the Act, and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.*;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from discriminating against any person because of disability in any aspect of the sale, rental, use, or enjoyment of a dwelling, pursuant to 42 U.S.C. § 3612(g)(3);
3. Requires Respondents to attend a training that is administered by an entity of HUD's choosing and that addresses the Fair Housing Act's prohibition against discrimination on the basis of disability, pursuant to 42 U.S.C. § 3612(g)(3);
4. Awards such damages as will fully compensate Complainants XXXX and XXXX for any and all injuries caused by Respondents' discriminatory conduct, pursuant to 42 U.S.C. § 3612(g)(3);
5. Assesses a civil penalty against each Respondent for each violation of the Act that Respondent has committed; pursuant to 42 U.S.C. § 3612(g)(3);

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

/ /

/ /

/ /

/ /

/ /

/ /

Respectfully submitted,

_____/s/_____
Kimberly Y. Nash
Regional Counsel, Region IX

_____/s/_____
Sara A. Wimberger
Attorney
Office of Counsel
Region IX
U.S. Department of Housing and
Urban Development
600 Harrison Street, 3rd Floor
San Francisco, CA 94107

Dated: September 30, 2011